

o : Division Chiefs and Above

Date: April 1, 1982

Memorandum

From STATE WATER RESOURCES CONTROL BOARD

Subject: LEGISLATIVE SUMMARY FOR THE FIRST HALF OF THE 1981-82 SESSION

The first half of the 1981-82 legislative session saw the enactment of a number of bills of significance to the State and Regional Boards. Bills introduced during 1981 and those introduced in 1982 which are still moving through the legislative process are discussed in our periodic legislative update.

This summary identifies legislation enacted thus far which is relevant to us, as well as important bills which were not enacted. The legislation is presented under four categories: 1) enacted legislation affecting the Water Code; 2) enacted legislation affecting related codes; 3) other enacted legislation of interest; and 4) legislation which did not become law. Copies of statutes amending or adding to the Water Code are included as an attachment so that the language may be incorporated into your personal copies of the Water Code.

If you need further information, or copies of any of the statutes or bills please let me know.

ENACTED LEGISLATION AFFECTING THE WATER CODE

AB 1376(Thurman). San Joaquin Valley Agricultural Drain. (Stats. of 1981, Chapter 33).

This statute prohibits any discharge from a San Joaquin Valley agricultural drain to the Delta, Suisun Bay, or Carquinez Straits until the requirements of the Porter-Cologne Water Quality Control Act and the Federal Clean Water Act are satisfied. It further supplements provisions of these acts with seven conditions which the State Board must find have been satisfied prior to permitting discharges from the drain to the Delta.

Four of the conditions address water quality protections from drain discharges and could have been properly imposed by the Board even in the absence of AB 1376. The other conditions address wetland habitat development, repayment provisions for drain users, and the location of the drainage facility.

SB 95(Presley). Water quality: hazardous waste facilities. (Stats. of 1982, Chapter 90).

This bill was carried at our request to eliminate the duplication between the State Board and Department of Health Services' (DOHS) programs for closure of hazardous waste disposal facilities. SB 95 abolishes Division 7.5 of the Water Code, but adds language to Porter-Cologne retaining Board authority over water quality protection in closing such facilities.

This statute requires every operator of a hazardous waste disposal facility to submit to DOHS for approval a plan for closure and subsequent maintenance of such facilities. Instead of requiring an additional closure report under Division 7.5 of the Water Code, SB 95 requires that the report submitted to DOHS must also be submitted to a Regional Board for review of measures to ensure protection of water quality. DOHS cannot approve a closure report without Regional Board concurrence. This statute further requires that DOHS reimburse the State Board for costs incurred by the Regional Boards in reviewing the site closure and maintenance reports.

Every facility operator must also carry insurance to cover the costs of accidental releases of hazardous wastes and the costs of safely maintaining the facility for 30 years after its closure.

This bill was an urgency statute and therefore went into effect upon signature on March 2, 1982.

SB 937(Vuich). Water rights. (Stats. of 1981, Chapter 567).

Existing law provides that an individual who reduces or stops groundwater use for the purpose of allowing replenishment of the groundwater can protect his/her groundwater rights from prescription if an adjudication is initiated subsequent to the reduction or cessation of groundwater pumping. To take advantage of this provision, an individual must file annually a statement with the State Board reporting the amount of groundwater no longer being pumped and the alternative non-tributary water source being used. This statement protects the individual's future groundwater rights if an adjudication is subsequently initiated in the courts.

This statute makes the filing of such a statement voluntary, instead of mandatory, for individuals wishing to protect their rights from prescription. Failure to file in no way affects the right of a user to claim the benefits of this policy.

Under a unrelated section of the Water Code, the State Board had been required to order or deny reconsideration on a petition to reconsider a water rights decision within 30 days after the petition is filed. This statute extends that period to 60 days. This section of the bill was carried at our request.

SB 1168(Nielsen). Water districts. (Stats. of 1981, Chapter 1048).

This statute authorizes the Edgerly Island Reclamation District to provide for the disposal of sewage, industrial wastes, or other waste and to provide for treatment facilities.

SB 1057(Ayala). Water project revenue bonds. (Stats. of 1981, Chapter 593).

Existing law provides that the maximum interest rate on revenue bonds issued by the Department of Water Resources for the State Water Project is 8.5 percent. The statute would increase the interest rate on bonds issued by DWR to finance construction or acquisition of electric power or power resources for the project to 12 percent until January 1, 1984.

ENACTED LEGISLATION AFFECTING RELATED CODESCivil Procedure

AB 1976(Young). Statutes of limitations. (Stats. of 1981, Chapter 494) and SB 802(Garamendi). Limitations of actions. (Stats. of 1981, Chapter 247).

These two laws specify a three-year statute of limitations within which civil actions must be commenced under the Hazardous Waste Control Law and the Porter-Cologne Water Quality Control Act, and that the statute of limitations begins to run once DOHS, or the State or Regional Boards discover facts constituting grounds for commencing such action.

Government Code

AB 1013(McCarthy). Administrative regulations. (Stats. of 1982, Chapter 61).

AB 1013 prohibits a state agency from issuing or using any guidelines or policies which are actually being enforced as regulations, unless the guidelines are first adopted pursuant to procedures for adopting regulations. If an agency does attempt to enforce guidelines and policies not so adopted, the Office of Administrative Law is allowed to issue a determination as to whether the guideline or policy is a regulation, and make known that determination to the agency involved, the Legislature, the Governor, the public, and the courts.

AB 1014(McCarthy). Administrative regulations. (Stats. of 1981, Chapter 865), SB 216(Boatwright). State government. (Stats. of 1981, Chapter 23), and SB 498(Presley). Administrative regulations. (Stats. of 1981, Chapter 983).

These statutes make numerous changes to the procedures for OAL review of agency regulations. We have a detailed analysis of these changes which is available upon request.

AB 2165(Costa). Government regulations. (Stats. of 1981, Chapter 86).

This statute authorizes OAL to make periodic recommendations to the Legislature for the repeal or amendment of statutes affecting regulatory agencies. It also requires that OAL, at the request of any legislative committee, complete within 60 days a review of any regulations believed by the committee to not meet the standards specified by law, and would make a regulation found to not meet such standards subject to repeal.

SB 257(Rains). Permit Reform Act of 1981. (Stats. of 1981, Chapter 1087).

This statute requires state agencies to adopt regulations establishing time periods within which they must issue permits. State agencies are allowed to exceed such time periods if they can show good cause, as specified in the statute.

SB 879(Keene). Public agencies. (Stats. of 1981, Chapter 968).

This statute permits state and local agencies to allow greater access to public records than prescribed in the California Public Records Act. SB 879 also specifies certain requirements of state and local agencies regarding public hearings and closed session meetings.

Health and Welfare Code

AB 1543(Tanner). Hazardous waste. (Stats. of 1982, Chapter 89).

This statute creates a 16 member Hazardous Waste Siting Council whose members represent state and local government, industry and the public. The State Water Board chairperson is a member of the Council. Its main responsibility is to prepare, prior to Jan. 1, 1983, a state plan for hazardous waste disposal. Additionally, this statute gives DOHS lead responsibility in the public management of toxic wastes. It also specifies that the hazardous waste control laws administered by DOHS shall not limit or supersede the powers and duties granted to the State or Regional Boards.

AB 1543 increases civil penalties for violating any provision of the hazardous waste control laws up to an amount not to exceed \$25,000, except for prescribed violations in which the amount of the penalty shall not exceed \$50,000.

This was an urgency statute and went into effect upon signature March 2, 1982.

AB 2075(Robinson). Hazardous waste: rewards. (Stats. of 1982, Chapter 93).

This statute requires payment to any person who provides information leading to the imposition of a civil penalty or conviction of a person violating provisions of the hazardous waste control laws. The payment will equal 10 percent of the civil penalty collected, not to exceed \$5,000. Public officers and employees who report those violations in the normal course of their duties are ineligible for the reward.

SB 501(Boatwright). Hazardous waste facilities. (Stats. of 1981, Chapter 244)

This statute precludes any city or county from prohibiting or unreasonably regulating the disposal, treatment, or recovery of resources from hazardous or solid wastes at any existing hazardous waste facility. It does, however, allow cities and counties to impose licensing taxes for operation of existing facilities, and to submit recommendations to DOHS for any additional permit or interim status conditions it deems necessary to protect the public health, domestic livestock, wildlife or the environment.

SB 618(Carpenter). Hazardous Substance Account. (Stats. of 1981, Chapter 756).

The "California Superfund" bill creates a fund to match federal funds for cleanup and removal of hazardous substances. Unlike CERCLA, SB 618 provides victim compensation for losses caused by hazardous substances, reimbursement to local governments for certain costs mandated by the state, and a continuous \$1 million annual appropriation from the Hazardous Substance Account to a reserve account to be used in emergency situations. The statute imposes a tax on the disposal of hazardous waste at as prescribed formula in order to maintain an average annual balance of \$10 million in the fund.

Public Resources Code

AB 710(Hannigan). Environmental quality: state regulatory programs and environmental impact reports. (Stats. of 1981, Chapter 480).

AB 710 declares any air quality management district to also be a state agency for purposes of the functional equivalency certification by the Resources Agency Secretary under CEQA. This statute also makes clear that public agencies preparing environmental impact reports or negative declarations are required by law to consider any comments they receive with respect to the environmental document under preparation.

AB 1076(Floyd). Environmental quality: exemptions (Stats. of 1981, Chapter 402).

This statute exempts from the requirement to prepare an environmental document for projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program. However, any site-specific effect of the project which has not been analyzed by the state agency is still subject to review under CEQA.

SB 803(Johnson). Environmental quality. (Stats. of 1981, Chapter 264).

This statute provides that for EIR purposes "any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area."

OTHER ENACTED LEGISLATION OF INTERESTEcology and the Environment

AB 813(Kapiloff). Ecological reserves. (Stats. of 1981, Chapter 342).

This statute authorizes the Department of Fish and Game, with approval of the Fish and Game Commission, to establish ecological reserves for the purpose of protecting "large and heterogenous natural marine gene pools for the future use of mankind."

AB 1039(Sher). Significant natural areas. (Stats. of 1981, Chapter 776).

This statute establishes the Significant Natural Areas Program to be administered by the Department of Fish and Game. Fish and Game is required to maintain, expand, and keep current a data management system which documents significant natural areas in the state. However, the statute specifically provides that nothing contained in the statute would change or prevent the change of the use of any area identified pursuant to the program.

AB 2214(Bosco). Wild and scenic rivers: Smith River tributaries. (Stats. of 1982, Chapter 14).

This statute excludes Hardscrabble Creek and all of its tributaries from the California Wild and Scenic Rivers System, these streams are part of the Smith River system. This bill classifies Copper Creek and its tributaries (also part of the Smith River system) as recreational, and prohibits any mining activity which would result in a significant adverse effect to the scenic, recreational, fishery or wildlife values within one quarter mile of the north fork of the Smith River.

This statute also allows the Resources Agency Secretary to authorize, under certain limited conditions, recreational impoundments on rivers in the Wild and Scenic System. The statute provides that it does not modify or limit the regulatory authority of any state agency under any other provision of law.

Parks and Recreation

AJR 14(Katz). Hansen Dam. (Stats. of 1981, Resolution Chapter 25).

This resolution memorializes Congress to enact legislation adding recreation and water conservation to the authorized purposes of the Hansen Dam, and authorizing a cost estimate and feasibility study for the cleanout of silt, sand, and gravel at the dam.

SB 83(Garamendi). Mono Lake Basin: Mono Lake Tufa State Reserve. (Stats. of 1981, Chapter 670).

This statute establishes the Mono Lake Tufa State Reserve consisting of the state-owned portions of the Mono Lake bed lying at or below 6,417 feet above sea level as a unit of the State Park system. It also makes it a misdemeanor to disturb or deface any tufa or associated sand structure on public or private lands, whether within or without the boundaries of the reserve.

SJR 24(Johnson). Auburn Dam construction. (Stats. of 1982, Resolution Chapter 13).

This resolution memorializes the President and Congress to expedite funding for the Auburn Dam and conclude its construction as soon as possible, provided that the new design is shown to be safe and that the dam's power and water users pay their fair share of the cost of the power and water. It also encourages Congress to provide adequate and unimpaired recreation and fishery flows for the lower American River in legislation reauthorizing the Auburn Dam.

Hazardous Waste

AJR 2(Ryan). Hazardous waste: taxation. (Stats. of 1981, Resolution Chapter 34).

This resolution memorializes the President and Congress to provide a 40 percent investment tax credit for equipment and facilities which reduce, eliminate, detoxify, neutralize, or recycle toxic and hazardous waste. AJR 2 also requests the federal government provide a 60-month amortization and depreciation period for such equipment and facilities.

AJR 17(Lancaster). Toxic and hazardous substance management. (Stats. of 1981, Resolution Chapter 30).

This resolution memorializes the President and Congress to exclude interest earnings on bonds issued by state and local governments to assist private industry with the costs of the installation of toxic and hazardous substance management facilities.

Miscellaneous

SB 442(Garamendi). Tahoe Regional Planning Agency. (Stats. of 1981, Chapter 57).

Existing law provides that the expenses of each appointee to the Tahoe Regional Planning Agency are to be paid by the body which the appointee represents. This statute provides that expenses of public appointees are to be paid out of the General Fund.

AB 585(Thurman). Nuisance: agriculture enterprises. (Stats. of 1981, Chapter 585).

This statute provides that an agricultural activity cannot be a nuisance due to any changed condition in the locality if the activity preceded the changed condition by more than 3 years, was not a nuisance at the time it began, and is consistent with local custom. This legislation is aimed at reducing nuisance suits which arise when non-agricultural land uses extend into agricultural areas creating incompatibility. Nuisance abatement authority set forth in Porter-Cologne, and several other specific codes are not affected by this statute.

AB 1885(L. Stirling). County water authorities: water reclamation. (Stats. of 1981, Chapter 456).

This statute deletes the requirement that a county water agency must have approval from a designated "208" planning agency prior to building a facility to treat, reclaim, or dispose of sewage and wastewater. Prior to its enactment, such an agency was the only local entity required to seek such prior approval. The Board's grant-making authority and its regulatory authority concerning treatment facilities are not affected by this statute.

ACR 6(N. Waters). South Fork American River project. (Stats. of 1981, Resolution Chapter 51).

This resolution recognizes and supports the South Fork American River project and directs the State Water Resources Control Board to give great evidentiary weight to benefits of the project and to expedite approval for the full appropriation of water necessary for complete development of the SOFAR project. The measure also directs specified state agencies to cooperate with the Board and concerned federal agencies to facilitate approval of the project. Resolutions are not enforceable law and merely express the sentiments of the Legislature.

AJR 12(Thurman). San Joaquin Valley drainage. (Stats. of 1982, Resolution Chapter 9).

This resolution memorializes the President and Congress and various federal agencies to join in the construction of a joint agricultural drainage and central salt disposal facility to serve San Luis and Delta-Mendota water users. AJR 12 makes a series of findings concerning the importance of agriculture in California, the productivity losses caused by salt buildup, and the importance of wetlands as wildlife habitats. The resolution also provides

that "drainage facilities should only be constructed and maintained if they are environmentally safe and in full compliance with the discharge requirements established and administered by the State Water Resources Control Board and the regional water quality control board."

LEGISLATION WHICH DID NOT BECOME LAW

Board Opposed or Neutral

AB 77(N. Waters). Pesticide regulations: environmental protection.

AB 77 would have exempted the Department of Food and Agriculture's pesticide regulatory program from CEQA requirements. The bill was practically identical to two bills introduced last session (AB 2223 and AB 2219), which also failed.

AB 851(Rogers). Pest control: confidential information.

Existing law requires that agricultural pest control advisors retain a copy of written recommendations regarding pesticide treatment. AB 851 would have provided trade secret protection to such recommendations and would have limited the ability of state agencies, other than the Department of Food and Agriculture, to acquire such recommendations.

AB 1274(Lehman). Water quality: pesticides.

AB 1274 would have deprived the state and regional boards of any jurisdiction to regulate the registration, use, method of application or timing of application of the agricultural use of pesticides. The author claimed the bill aimed at eliminating duplication of effort between the State Water Board and the Department of Food and Agriculture. The bill failed passage out of the Assembly by the January 30, 1982 deadline.

AB 1481, 1482, 1483, 1484(Kapiloff). Water resources development.

All of these bills were alternatives to the Peripheral Canal for increasing the capacity of the State Water Project facilities to pump water out of the Delta to the South. These bills would have become operative only if the voters rejected the Peripheral Canal referendum.

AB 2249(Bates). Water resources.

AB 2249 would have made four major changes in California water law which would: 1) require the Board to develop a plan for state water needs; 2) require all applications to appropriate water include a water conservation plan; 3) finance the State Water Project by charging delivery costs to water users instead of property taxpayers; and 4) remove constraints on resale of water by local districts.

AB 2280(N. Waters). Appropriation of water: hydroelectric energy.

AB 2280 would have required the Water Board to consider and act upon all applications to appropriate water for hydroelectric projects within one year from the date of filing. It would have also prohibited the Board from limiting or disapproving an application unless the project would have caused harm to the fish, wildlife, or water quality which was irreparable.

SB 1049(Montoya). Hazardous waste facilities.

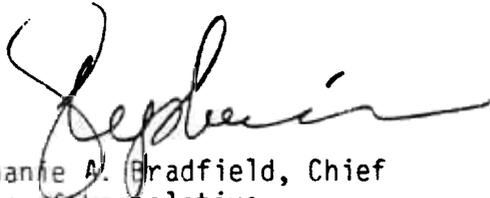
This bill would have established the Hazardous Waste Facility Site Evaluation Council as the lead CEQA agency responsible for regulating the siting of hazardous waste facilities. The Water Board Chairperson would have been one of the six permanent members, and two of the three temporary members would have been from the Regional Water Quality Control Board within whose jurisdiction the site was proposed.

Board SupportedAB 763(Campbell). Salvage water.

This bill would have specified that anyone who reduces water evaporation under specified circumstances may appropriate such "salvaged" water by complying with the procedures for appropriating water. AB 763 also had provisions protecting the rights of existing water users and the natural environment from any activities intended to create "salvaged" water.

AB 1200(McCarthy). Water Bond Law of 1982.

This bill would have proposed a \$400 million bond issue to provide aid to public agencies for water pollution control and water reclamation facilities. With the concurrence of the Water Board, the author allowed the bill to die because the federal appropriation for the Clean Water Program was substantially smaller than we had expected. This eliminated the need for a new bond act this legislative session.



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and Public Affairs